

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

A. O. NO. 198 OF 2006

Keti Fredon Mehta ... Appellant

VS.

Municipal Corporation of Greater Mumbai & ors. ... Respondents

Mr. Abhay Abhyankar with Ms.S. Srikrishna i/b. Kanga & Co., for appellants.

Mr. B. R. Chaudhari i/b. Wadia Gandhi & Co., for respondent no.3.

Mr. K. K. Singhavi with Mr. A.S. Kamat for respondent nos. 1 &2.

CORAM: D. G. KARNIK J.

DATE: November 29, 2006

P.C.:

1. Heard learned counsel for the parties.
2. This appeal is directed against the order dated 4<sup>th</sup> February 2006 passed by the City Civil Court, rejecting the prayer of the appellant for permanent injunction restraining the respondent nos. 1 and 2 Municipal Corporation and its officers from demolishing the unauthorized structure.
3. Respondent no. 3 is the owner of the property situate at SBS Road, Colaba, Bombay 400 005. The appellant is a tenant of a one room therein which was previously used by a Mali and presently occupied by the appellant. The appellant

constructed a shed covering the open space between the garage and the compound wall and put up a mangalore tiles roof over the said shed. Appellant ofcourse has denied having constructed the shed but claims that the said shed was acquired by the appellant as a study room from the respondent no.3 landlord. By the notice dated 23<sup>rd</sup> July 2005 issued under section 55 of the Maharashtra Regional Town Planning Act 1966 (for short MRTP Act) the respondent no.1 Municipal Corporation, which is also the planning authority, called upon the appellant to remove the said shed which was erected by putting up a shed in the open space between the garage and the compound wall within 15 days of the notice. Aggrieved by the said notice the appellant filed a suit bearing Long Cause Suit no. 3103 of 2005 for an injunction restraining respondent no.1 Municipal Corporation, respondent no. 2 the Assistant Municipal Commissioner, from removing the said shed. The appellant also joined respondent no.3 – landlord- as a party defendant alleging that the notice was issued at his instance.

4. Mr. Abhyankar learned counsel for the appellant submitted that the notice under section 55 of the MRTP Act could be issued only in respect of unauthorized erection of a temporary structure and not in respect of the permanent structure. He submitted that the suit structure was a

permanent structure and was in existence for a period of more than 25 years. The very fact that the structure was in existence for many years would show that the structure was not a temporary structure. He also invited my attention to the report of the Court Commissioner who had opined that the structure was of a permanent nature. He therefore submitted that the notice was bad in law.

5. Section 55 of the MRTP Act reads as under:

“55. Removal or discontinuance of unauthorized temporary development summarily. - Notwithstanding anything herein before contained in this Chapter, where any person has carried out any development of a temporary nature unauthorizedly as indicated in sub section (1) of section 52 , the Planning Authority may by an order in writing direct that person to remove any structure or work erected, or discontinue the use of land made unauthorizedly as aforesaid, within fifteen days of the receipt of the order; and if thereafter, the person does not comply with the order within the said period, the Planning Authority may request the District Magistrate or the Commissioner of Police, as the case may be, or authorize any of its officers or servants, to have

such work summarily removed or such use summarily discontinued without any notice as directed in the order; and any development unauthorized made again, shall be similarly removed or discontinued summarily without making any order as aforesaid.

(2) The decision of the Planning Authority on the question of what is development of a temporary nature shall be final”.

6. It is true that section 55 applies only in respect of temporary development and not of permanent development. In my view, there is difference between the word 'development' and 'structure'. However, in my view it cannot be said that the erection of the suit shed was not a temporary development. Mere fact that the shed which was made by erecting mangalore tiles roof, whose one end is resting on a garage and the other end is resting on a wall has to be held to be of a permanent development. The report of the Court Commissioner is ambiguous. He appears to have confused between the authorized room which was in occupation of the appellant as a tenant and the suit structure. Secondly the Court Commissioner was not an expert technical person. He was a Deputy Registrar of the court. He had no authority to give an opinion as to the nature of the development viz.,

whether it was a permanent development or a temporary development. Sub section 2 of section 55 shows that the decision of the Planning Authority on the question whether the development is a temporary nature is final. The Court Commissioner' personal opinion therefore cannot supersede the decision of the Planning Authority reached under section 2 of section 55 about the nature of the structure. The contention of Mr. Abhyankar that the suit shed was a permanent development has therefore to be rejected.

7. Mr. Abhyankar then submitted that the notice has been issued by the respondent at the instance of respondent no.3 , the landlord who had let out the structure and now wants to get it pulled down from the Municipal Corporation. Admittedly the structure is erected in open to cover the open space between the garage and the compound wall of the property. The suit structure is made in the compulsory open space and is without any set back from the boundary of the property. As such the said structure cannot be an authorized one. In any event it is the duty of the tenant to know the nature of the structure especially when the structure is between the compulsory open space and the compound wall. The tenant cannot derive any advantage by contending that the notice has been issued at the instance of the landlord if the structure is unauthorized irrespective of whether it is

erected by the landlord or the tenant.

8. In the circumstances there is no merit in the appeal which is hereby dismissed summarily.

At the request of Mr. Abhyankar, learned counsel for the appellant, that he wants to challenge the order in appeal the operation of the order is stayed for a period of 4 weeks.

**(D.G. KARNIK J.)**

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CIVIL APPELLATE JURISDICTION

Civil application no. 273 of 2006  
in  
A. O. NO. 198 OF 2006

Keti Fredon Mehta ... Appellant

VS.

Municipal Corporation of Greater Mumbai & ors. ... Respondents

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In view of the disposal of the appeal this civil application does not survive and is disposed of.

**(D.G. KARNIK J.)**